



THE CITY OF NEW YORK  
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January 28, 2008

**VIA HAND DELIVERY**

Honorable George B. Daniels  
United States District Judge, SDNY  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Mike C. Hawley v. C.O. Phillip et al., 07 Civ. 9257 (GBD)

SO ORDERED  
*George B. Daniels*  
JUDGE GEORGE B. DANIELS  
JAN 29 2008

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter in which the City of New York is not a named defendant.<sup>1</sup> In essence, plaintiff's complaint alleges excessive force resulting from an incident that occurred on April 1, 2007 while plaintiff was an inmate at Rikers Island. I note for the Court's information that according to the civil docket sheet defendants C.O. Phillip, Captain Sullivan and C.O. Gaton were served with process on January 8, 2008. Based upon the date of service listed on the docket sheet, C.O. Phillip, Captain Sullivan and C.O. Gaton's answer is presently due today. This office has not discussed with C.O. Phillip, Captain Sullivan or C.O. Gaton the manner of service and we make no representation herein as to the adequacy of service upon them. A decision concerning this Office's representation of C.O. Phillip, Captain Sullivan and C.O. Gaton has not yet been made. Accordingly, given the time involved in determining the representation of a correction officer, and in the interest of judicial economy, we hope that the court will, *sua sponte*, grant a sixty-day enlargement of time, until March 28, 2008, for C.O. Phillip, Captain Sullivan and C.O. Gaton to answer the complaint. Plaintiff is incarcerated and proceeding *pro se*; therefore, this application is made directly to the Court. I note further that no previous request for an extension has been made in this action.

<sup>1</sup> This case has been assigned to Assistant Corporation Counsel Philip S. Frank, who is presently awaiting admission to the bar and is handling this matter under supervision. Mr. Frank may be reached directly at (212) 788-0893.

There are several reasons for granting an enlargement of time in this matter. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. In this case, plaintiff alleges that defendants used excessive force while plaintiff was an inmate at Rikers Island. Accordingly, it is necessary for our office to acquire as much information as possible concerning this matter in order to properly assess the case and respond to the complaint. Given plaintiff's allegations that the excessive force used against him caused him physical injuries, this office is in the process of forwarding to plaintiff for execution a consent and authorization for the release of any records of medical treatment.

Further, the extension should allow time for this office to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent the individually named defendants. See Mercurio v. City of New York, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

I would like to assure the Court that we are attempting to move forward in this litigation as expeditiously as possible, and that the enlargement is necessary in order for us to proceed effectively. Accordingly, we would respectfully ask that the Court grant a sixty-day enlargement of time for defendants to respond to the complaint, until March 28, 2008.

I thank the Court for its time and consideration of this request.

Respectfully submitted,



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